F. M. S. REPORTS.

[APPELLATE CIVIL JURISDICTION]
HOWES, J.
March 12, 1935.

PERAK PENGHULU'S APPEAL No. 9 of 1934.

[ON A REFERENCE UNDER SECTION 586, CIVIL PROCEDURE CODE. 1918]

The Civil Procedure Code, 1918, sub-section 544(ii)—Procedure on hearing of an appeal from the Court of a Penghulu.

In an appeal from the Court of a Penghulu under sub-section 544 (ii) of the Civil Procedure Code, 1918, the Magistrate must re-hear the case which is the subject matter of the appeal. He is not entitled to hear and determine such appeal on the notes of evidence recorded by the Penghulu.

HOWES, J.—In this case, the Magistrate, Kuala Kangsar, has, under Section 586 of the Civil Procedure Code, 1918, referred to this Court for its decision, the following question:—

> "Whether an appeal from the Court of a Penghulu to a Magistrate of the First Class shall be by way of rehearing; or shall be heard and determined on the notes of evidence recorded by the Penghulu."

Section 544 (ii) of the Civil Procedure Code, 1918, reads—

> "Appeals from the Court of a Penghulu to the Court of a Magistrate of the First Class shall be heard in a summary manner and with as little formality as possible. The procedure at present in force in such appeals shall continue in force, subject to any amendments which may from time to time be directed by the Judges."

No such amedments have, so far, been directed.

Section 544 (ii) of the Civil Procedure Code, 1918, is identical with Section 501 (iii) of the Perak Civil Procedure Code, 1902, (No. 11/1902) which State Enactment was repealed by the Civil Procedure Code, 1918.

The Perak Civil Procedure Code, 1902, repealed the Perak Order in Council No. 6 of 1893 (Perak Government Gazette (1893) Vol. VI, page 656) which laid down the procedure to be followed at that time in Civil Appeals; including appeals from a Penghulu or Kathi to the Court of a Magistrate of the First or Second Class.

Paragraph 7 of Order in Council No. 6 of 1893 enacted that—

> "all appeals shall be by way of re-hearing, and shall be heard and determined upon the evidence of the parties thereto and their witnesses."

Since no other procedure was therein provided, rehearing of the case was "the procedure at present in force in such appeals" when the Perak Civil Procedure Code, 1902, (repealing the Order in Council No. 6 of 1893) was enacted; and again this was the procedure "at present in force" when the Civil Procedure Code, 1918, Section 544 (ii) was enacted.

In the absence of the directions from the Judges mentioned in Section 544 (ii), it follows that in appeals from the Court of a Penghulu to the Court of a Magistrate of the First Class, the procedure to be followed is that which was laid down in the (now repealed) Order in Council No. 6 of 1893 para. 7 (*supra*) viz, that all appeals shall be by way of rehearing.

I therefore hold that in an appeal from the Court of a Penghulu under Section 544 (ii) of the Civil Procedure Code, 1918, the Magistrate must re-hear the case which is the subject matter of the appeal; and is not entitled to hear and determine such appeal on the notes of evidence recorded by the Penghulu.

[APPELLATE CRIMINAL JURISDICTION]
THOMAS, C.J.
July 22, 1935.

THE PUBLIC PROSECUTOR.....Appellant

v.

MOHAMED SHAHAR BIN ABDUL HAMID Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 21 of 1935.]

The Public Authorities Protection Enactment, 1929, section 2—Applicability of, to a criminal prosecution.

Section 2 of the Public Authorities Protection Enactment, 1929, applies only to the performance or non-performance of official duties, and affords a certain amount of protection to officials in respect of their official duties by requiring that notice should be given. It does not extend to any offence committed contrary to the Penal Code, because it cannot be part of any official's duty to commit an offence contrary to the Penal Code.

H. C. Willan, Deputy Legal Adviser, for the appellant.

S. M. Sharma for the respondent.

THOMAS, C.J.—I have no doubts whatever in this case, so I propose to give judgment at once. At the hearing before the Magistrate Mr. Sharma took an objection that under Enactment No. 20 of 1929 a month's notice should have been given to the accused before any prosecution was commenced, and that inasmuch as that notice had not been given the prosecution could not proceed. This objection was allowed, and the accused was discharged. From that order the Public Prosecutor appeals.

Section 2 (i) (a) & (b) of Enactment No. 20 of 1929 reads as follows:—

> "Where any action prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Enactment or rules made thereunder or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Enactment, rules, duty or authority the following provisions shall have effect: